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DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES

WASHINGTON, D.C. 20548

[Determination of Travel Entitlements at Time of Separation or Retirement from Military Service]

FILE: B-197794

DATE: December 31, 1980

MATTER OF: Place from which ordered to active
duty - Cadets or midshipmen

DIGEST: For the purpose of travel and transportation allowances under 37 U.S.C. 404, and implementing regulations, on separation the place from which ordered to active duty, in the case of a midshipman or cadet at a service academy or civilian college or university, is the place where he attains a military status or where he enters the service, and generally this would be at the academic institution and not his home of record, since up to the time he is appointed a cadet or midshipman he is a civilian.

The question presented is whether a service academy or a civilian college or university where a cadet or midshipman accepts his commission should be considered the place from which ordered to active duty for the purposes of determining travel entitlements at the time of separation or retirement from the service under 37 U.S.C. 404 and implementing regulations. The answer is yes.

This request for advance decision was made by the Acting Assistant Secretary of the Air Force (Manpower, Reserve Affairs and Installations) and was assigned Control Number 80-6 by the Per Diem, Travel and Transportation Allowance Committee.

The Acting Assistant Secretary points out that under 37 U.S.C. 404(a)(3), a member of the uniformed services is entitled to travel and transportation allowances on his separation from the service from his last duty station to his home of record or the place from which ordered to active duty. Under the definition of "Place from which ordered to active duty" contained in Appendix J of Volume 1 of the Joint Travel Regulations (1 JTR), implementing the statute, it would appear that the physical location where a member accepts his commission would be the place from which he was ordered to active duty. Notwithstanding this view, it has been a longstanding administrative practice of the Navy that a midshipman

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on commissioning should reflect his home of record as the place from which he was ordered to active duty.) It is noted that this practice is based on the fact that a permit to attend the academy is mailed to his home. This practice is followed even though the individual remains a civilian until he accepts the appointment as a midshipman.)

In view of the above, a decision is requested concerning the appropriateness of designating a service academy or a civilian college or university as the place from which ordered to active duty for a civilian entering into the armed forces by appointment as a midshipman or cadet and is subsequently commissioned as an officer.)

Travel and transportation allowances for members of the uniformed services are governed in part by 37 U.S.C. 404, which provides in pertinent part as follows:

"(a) Under regulations prescribed by the Secretaries concerned, a member of a uniformed service is entitled to travel and transportation allowances for travel performed or to be performed under orders, without regard to the comparative costs of the various modes of transportation--

* * * * *

"(3) upon separation from the service, placement on the temporary disability retired list, release from active duty, or retirement, from his last duty station to his home or the place from which he was called or ordered to active duty, whether or not he is or will be a member of a uniformed service at the time the travel is or will be performed; * * *

Paragraph M4157, 1 JTR provides that a member is entitled to travel and transportation allowances upon separation from his last duty station to his home or the place from which he was called or ordered to duty, as the member

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may elect. Appendix J, 1 JTR defines "place from which ordered to active duty" as:

"The place of acceptance in current enlistment, commission, or appointment of members of the regular services, or of members of the reserve components when enlisted, commissioned, or appointed for immediate active duty; * * *."

It has been the position of this Office that the purpose of the statutory provisions for the payment of travel allowances upon separation from the service or release from active duty is to return the member to his home or to the place from which he entered the service from civilian life. B-120297, September 8, 1954.

In this regard, it is apparently the position of the Navy that when an individual's status changes from that of midshipman at the Naval Academy on his receiving his commission that it has no significance in determining the place from which he was ordered to active duty. See B-120297, September 8, 1974, and 46 Comp. Gen. 661 (1966). The view is also expressed that service as a midshipman at the Naval Academy is at least tantamount to active duty, if not clearly such, and thus the place from which he is ordered to active duty would be the place to which his permit to travel to the academy was sent, his home.

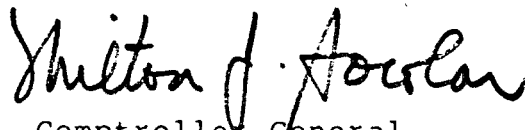
Notwithstanding these views, it is our position that the place from which ordered to active duty as used in the statute and the regulations contemplates an individual having some military status and then being ordered to active duty. It has been customary to interchange in usage "the place from which ordered to active duty" and "the place where he enters the service." In this regard, a candidate for admission to the Naval Academy is a civilian until he arrives at the academy and accepts his appointment. We have been advised that prior to traveling to the academy all the individual normally receives is a permit for the travel. In these circumstances, it cannot be said a candidate for admission to the Naval Academy

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accepts appointment by actions prior to taking the required oath as in 21 Comp. Gen. 819 (1942).

On the basis of this reasoning, it is our view that the place from which a cadet or midshipman at the Naval Academy or a civilian college or university is ordered to active duty, is the place where he attains a military status or the place where he enters the service, assuming of course that he has no prior military status.

Accordingly, it is our view that unless a candidate to be a cadet or midshipman has some military status prior to being appointed, his home of record should not be considered the place from which he is ordered to active duty, but rather the place from which ordered to military duty should be the place at which he attains a military status e.g., the Naval Academy.



Acting Comptroller General
of the United States